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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 154 1547.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, PETITIONER,

vs.

TINE COHEN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED NOVEMBER 20, 1899.
CERTIORARI AND RETURN FILED MAR 10 1900

(17,568.)

(17,568.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 454.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, PETITIONER,

vs.

TINE COHEN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 17, 1900.

1 In the Circuit Court of the United States for the District of Washington, Western Division, July Term, 1898.

Be it remembered that on the ninth day of November, 1898, there was duly filed in said circuit court of the United States for the district of Washington, western division, a complaint in words and figures as follows, to wit:

In the Circuit Court of the United States, District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

Complaint.

Comes now the above-named plaintiff, Tine Cohen, and complains of the above-named defendant, The Mutual Life Insurance Company of New York, and for her cause of action against said defendant alleges:

I.

That said defendant is a corporation duly organized, acting
2 and existing under and by virtue of the laws of the State of New York for the purpose of carrying on a life-insurance business, having its principal place of business in the city of New York, State of New York.

II.

That during all the times herein mentioned the plaintiff was and now is a resident, citizen and inhabitant of the State of Washington.

III.

That on or about the tenth day of June, 1885, said defendant in consideration of the sum of eighty-nine and sixty-one one-hundredths dollars ($89.61), to it in hand paid by one Alexander Cohen, made, executed, and delivered in said city and State of New York a certain contract of life insurance hereinafter set forth whereby it insured the life of said Alexander Cohen in the sum of three thousand dollars. That defendant in said contract agreed to pay to the wife of said Alexander Cohen, Tine Cohen, if living, and, if not living, then to their children, their executors, administrators, or assigns, within sixty days after satisfactory proof at its said office of the death of said Alexander Cohen during the continuance of said policy, the sum of three thousand dollars. Said contract is in words and figures as follows, to wit:

No. 264,857.

Semi-endowment.

The Mutual Life Insurance Company of New York.

Age, 37 years. Amount, $1,500 end.

½ annual premium, $45.57. 3,000 life.

In consideration of the application for this policy, and of
3 the truth of the several statements made therein, and of the premiums hereinafter specified, promises to pay, at its home office in the city of New York, unto Alexander Cohen of Butte City, in the county of Silver Bow, State of Montana, fifteen hundred dollars, on the tenth day of June, in the year 1905, if then living, at its said office of the company in the city of New York, or, if he should die before that time, then in like manner to pay the sum of three thousand dollars to his wife, Tine Cohen, if living, and, if not living, then to their children, their executors, administrators, or assigns (any indebtedness to the company on account of this contract to be first deducted therefrom), within sixty days after satisfactory proof at its said office of the death of said Alexander Cohen during the continuance of this policy, upon the following conditions:

First. The — annual premium of eighty-nine dollars and sixty-one cents shall be paid in advance to the company, at its home office in the city of New York, on the delivery of this policy, and thereafter on the tenth day of June in every year during the continuance of this contract.

Second. The insured shall not transgress the limits of residence and travel prescribed on the back of this policy, which are hereby referred to and made part hereof, or engage in any occupation there forbidden, without the consent of the company in writing.

Third. The company does not insure against self-destruction in any form, except upon proof that the same is the direct result of disease or of accident occurring without the voluntary act of the insured.

Fourth. If this policy shall become void, all payments
4 previously made upon it shall be forfeited to the company; but, if such forfeiture shall occur by non-payment of premium, after three full annual premiums have been paid, the company will, upon surrender of this policy, within six months after such forfeiture, issue a paid-up policy for a fixed sum computed according to the legal standard of the State of New York.

Fifth. Proofs shall be furnished to the company as soon as possible after the death of the insured in such form and containing such statements as the company shall require under its general rules.

Sixth. Any claim under this policy shall be presented in writing to the company, at its home office, in the city of New York, accompanied by a statement of the court in which the same is to be prosecuted if not settled, at least sixty days before any action shall be commenced thereon, to the end that the same may be settled

amicable; and, in case such claim should arise after the death of the insured, any action thereon shall be commenced in one year thereafter.

In witness whereof the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of June, A. D. one thousand eight hundred and eighty-five.

ROB'T A. GRANNISS,
Vice-President.

ISAAC S. LLOYD, *Secretary.*

Provisions and Requirements Referred to in This Policy.

This company allows the insured under this policy to
5 reside, travel and visit within the following geographical limits, and to make voyages in first-class vessels to and from places within said limits during the periods hereinafter respectively provided:

First. Within the Dominion of Canada and the peninsula of Alaska, south of the sixtieth parallel of north latitude. In Europe north of the forty-second parallel of north latitude. In the United States of America between the parallels sixty degrees and thirty-six degrees thirty minutes north latitude, in North Carolina, South Carolina and Georgia except within sixty miles of the Atlantic ocean. In Tennessee east of the Tennessee river. In Alabama north of the thirty-second degree north latitude. In that part of Florida within sixty miles of the Atlantic ocean, north of the parallel twenty-eight degrees north latitude. And in all parts of the United States west of the meridian ninety-two degrees west longitude, north of thirty-three degrees north latitude, and west of the meridian ninety-five degrees west longitude, north of the thirty-three degrees north latitude, and west of the meridian ninety-five degrees west longitude, except within sixty miles of the gulf of Mexico. In the cities of Wilmington, N. C., Charleston, S. C., Savannah, Ga., and Tallahassee, Fla. ——. During the entire year.

Second. In all parts of the United States, south of the sixtieth parallel of north latitude. —— between November 1 and July 1.

Also:

Third. On the continent of Europe, south of the forty-second parallel of north latitude, in Egypt, Palestine, and Syria.
6 ——. During the months of November, December, January, February, March, April and May.

Fourth. Any place not above specified on or near the Mississippi river or within sixty miles of the Atlantic ocean or gulf of Mexico, south of the parallel of thirty-six degrees thirty minutes north latitude within the United States. ——. Not exceeding three days at any one time, between July 1 and November 1.

Fifth. At any place in Tennessee west of the Tennessee river; in Alabama south of the thirty-second parallel of north latitude; in Arkansas east of the meridian ninety-two minutes west longi-

tude; in Mississippi, in Louisiana, and in Texas within one hundred miles of the westerly line of Louisiana, for business purposes. ——. Not exceeding three days at any one time, between July 1 and November 1.

Subject to the following conditions:

First. That neither a state of war, nor cholera, yellow fever or plague shall exist at any such place in foreign countries during the period when so resided in or visited.

Second. That in case of visit between July 1 and November 1, to any of the points specified in paragraphs four and five, or while residing in Savannah, Georgia, Wilmington, North Carolina, or Charleston, South Carolina, the company shall not be liable in case of the death of the insured resulting from yellow fever contracted during such visit or residence, unless it shall appear that he has been previously acclimated to such regions by continuous residence or by having had the yellow fever.

7 To visit, travel, or reside beyond the limits and boundaries above given permission must be obtained from the company in writing.

Occupation and employments.—The insured shall not engage in blasting, mining, submarine labor, aeronautic travel or excursions, the manufacture, handling, or transportation of inflammable explosive substances, service upon any railroad or any steamboat or other vessel, or in military or naval service of any kind in time of war, without the consent of the company in writing.

Notice.

Payment of premiums.—All premiums are due and payable at the home office of the company in the city of New York; but will be accepted elsewhere, when duly made in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived, and that part of the year's premium, if any, which remains unpaid at the maturity of this contract shall be regarded as an indebtedness to the company on account of this contract, and shall be deducted from the amount of the claim.

Power of agents.—No agent has power, on behalf of the company, to make or modify this or any contract of insurance, to extend the time for paying a premium, to issue a permit for residence, travel, or occupation, or to bind the company by making any promise, or by receiving any representation or information not contained in the application for this policy.

8 Assignments.—The company declines to notice any assignment of this policy until the original or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

IV.

That on the twenty-first day of September, 1897, said Alexander Cohen died in the city of Rossland, British Columbia, Dominion of Canada.

V.

That during the lifetime of said Alexander Cohen he duly performed all the conditions of said contract by him to be performed.

VI.

That on or about the twenty-seventh day of December, 1897, the plaintiff caused said defendant to be notified of the death of said Alexander Cohen, stating that he had died on or about the twenty-first day of September, 1897. That on said date the plaintiff furnished the defendant with good and sufficient proofs of the death of said Alexander Cohen.

VII.

That on or about the third day of January, 1898, said defendant acknowledged the receipt of said notice and proofs of death and made no objection to the kind, form, or sufficiency of said proofs of death. That on or about the tenth day of February, 1898, said defendant requested the plaintiff to procure further proofs of death on what it pretended and alleged to be its usual form of proof of death. That with much trouble, labor and expense, to wit,
9 $25.00, plaintiff undertook to comply with said demand, but was unable to secure the certificate of the physician who attended said Alexander Cohen at his death.

VIII.

That on or about the first day of May, 1898, defendant denied to the plaintiff any and all liability on said policy of insurance.

IX.

That said plaintiff has duly complied with all the conditions of said contract by her necessary to be complied with.

X.

That the plaintiff Tine Cohen is the Tine Cohen in said policy mentioned, and during all the times herein mentioned and up to the time of the death of said Alexander Cohen was his lawfully wedded wife.

XI.

That plaintiff is now the owner and holder of said policy, and there is now due her from said defendant the full sum of three thousand dollars, with interest thereon from the fifth day of March, 1898.

XII.

That said defendant has wholly neglected to pay said policy or any part thereof.

Wherefore, plaintiff prays judgment against said defendant
10 in the full sum of three thousand dollars, with interest thereon from the fifth day of March, 1898, together with her costs and disbursements in this action.

S. WARBURTON,
Attorney for Plaintiff,
310 *Fidelity Building, Tacoma, Washington.*

STATE OF WASHINGTON, }
County of King, } *ss:*

Tine Cohen, being first duly sworn, on her oath deposes and says that she is the plaintiff in the above-entitled action; that she has read the within and foregoing complaint, knows the contents thereof, and believes the same to be true.

MRS. TINE COHEN.

Subscribed and sworn to before me this nineteenth day of October, 1898.

G. W. UPPER,
Notary Public in and for Washington, Residing at Seattle.

Endorsed and filed in the United States circuit court, Nov. 9, 1898.
A. REEVES AYRES, *Clerk.*
SAM'L D. BRIDGES, *Deputy.*

And afterward, to wit, on the twenty-ninth day of November, 1898, there was duly filed in said court in said cause a motion to make more definite and certain in the words and figures following, to wit:

11 In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 613.

Motion to Make More Definite and Certain.

Comes now the above-named defendant, and moves the court to require the plaintiff to make her complaint, and particularly paragraph V thereof, more definite and certain in this:

I.

That the said plaintiff be required to state whether the said Alexander Cohen in his lifetime made or caused to be made payment of the annual premium of eighty-nine and sixty-one one-hundredths dollars, becoming due on the policy referred to in said complaint,

each year, subsequent to the delivery of said policy at the time in said policy provided, and, if payment was not so made, to require said plaintiff to state what, if any, payments of premium were made upon said policy subsequent to the delivery thereof.

II.

And in case the said Alexander Cohen in his lifetime failed to pay all or any of the premiums falling due upon said policy subsequent to the delivery thereof, whether the said plaintiff has ever
12 tendered or offered to make payment of any premium upon said policy unpaid at the time of the death of said Alexander Cohen.

STRUVE, ALLEN, HUGHES & McMICKEN,
Attorneys for Defendant.

Filed in the United States circuit court Nov. 29, 1898.
A. REEVES AYRES, *Clerk*,
By SAM'L D. BRIDGES, *Deputy*.

And afterward, to wit, on the nineteenth day of January, 1899, there was duly filed in said court in said cause an order overruling motion to make more definite and certain, in the words and figures following, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 613.

Order Denying Motion to Make More Definite and Certain.

This cause coming on to be heard on the motion of the defendant to require the plaintiff to make her complaint more definite and certain, and the court being fully advised—

It is ordered that said motion be, and the same is hereby, overruled and denied.

13 To this ruling of the court the defendant excepts, and its exception is allowed.

C. H. HANFORD, *Judge*.

Filed in the United States circuit court Jan. 19, 1899.
A. REEVES AYRES, *Clerk*,
By SAM'L D. BRIDGES, *Deputy*.

And afterward, to wit, on the twenty-third day of March, 1899, there was duly filed in said court in said cause an answer, in the words and figures following, to wit:

In the Circuit Court of the United States, District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 613.

Answer.

Comes now the above-named defendant, and makes answer to the complaint herein as follows:

I.

For answer to paragraph three of said complaint, defendant admits that the contract or policy of insurance therein set forth, No. 264,857, was made, executed, and delivered between the said Alexander Cohen and defendant, at the time and for the consideration in said paragraph stated, but denies that the said contract was made or delivered for the said sum of $89.61, or any part of it, was paid by the said Alexander Cohen, or caused to be paid by him in
14 said city or State of New York, or any other place than at Butte City, in the Territory, now State, of Montana.

II.

For answer to paragraph five of said complaint, defendant denies the same, and each and every allegation therein contained.

III.

For answer to paragraph seven, defendant admits that on or about January 3, 189–, defendant acknowledged receipt of said notice and proofs of death, and made no objection to the sufficiency thereof, but denies each and every other allegation in said paragraph contained.

IV.

In answer to paragraph nine defendant denies the same and each and every allegation therein contained.

V.

For answer to paragraph eleven of said complaint, defendant denies the same; and each and every allegation in said paragraph contained.

And by way of a further and affirmative answer and defense to the said complaint, defendant alleges the following:

I.

That defendant is a corporation duly organized and existing under and by virtue of the laws of the State of New York, for the purpose of carrying on a life-insurance business, having its principal place of business in the city of New York, State of New York, and was such corporation during all the times hereinafter named.

15 II.

That on or about the tenth day of June, 1885, in consideration of the application in writing to this defendant for a policy of insurance and of the truth of the several statements therein made, and the premiums in such policy specified, to wit, the premium of $89.61 to be paid at the place of delivery of said policy, and the further annual premium of $89.61 payable in advance to defendant at its home office in the city of New York, on the tenth day of June in every year, during the continuance of said policy, the said defendant at said Butte City, Montana, executed and delivered to said Alexander Cohen, its policy of insurance upon its life, wherein and whereby it insured the life of the said Alexander Cohen in the sum of three thousand dollars—fifteen hundred dollars of said amount to be paid to the said Alexander Cohen on the tenth day of June, in the year 1905, if he should then be living, or, if he should die before that time, then the said entire sum of three thousand dollars to be paid to his wife, Tine Cohen, if living, and if not living, then to their children, executors, administrators, and assigns, provided the said contract of insurance should continue in existence upon the happening of said event, which said contract or policy of insurance is the said policy No. 264,857 set forth in plaintiff's complaint. That the application mentioned in and as constituting a part of said policy, and which does constitute a part of the said policy and contract of insurance, contains, among others, the following provision:

"It is hereby declared and agreed that all the statements and answers to the printed questions written upon the forms A

16 and B, which, together with this declaration and agreement, constitute an application to the Mutual Life Insurance Company of New York, for an insurance of —— dollars upon the life of —— ——, are offered to the said company as a consideration of the contract applied for; each of which every person whose name is hereto subscribed warrants to be full, complete, and true, and to be the only statements given to the company in reply to its inquiries. And this application is submitted to the said company with the following express covenants and agreements: 1. That it will constitute no contract of insurance until a policy shall first have been issued and delivered by the said company, and the first premium thereon actually paid, during the continuance of the life proposed for insurance, in the same condition of health as described in the application. 2. That if the insurance applied for be granted by the company, the policy, if accepted, will be accepted subject to all the conditions and stipulations contained in the policy. 3. That in any distribution of surplus, the principles and methods which may be adopted by the company for such distributions, and its determination of the amount equitably belonging to such policy, shall be and are hereby ratified and accepted by and for every person who shall have or claim any interest under the contract now proposed. 4. That in consideration of the surrender value promised in the policy, and in this application, viz: If this policy shall become forfeited by

non-payment of any premium at any time after three full annual premiums have been paid, the company will, upon the surrender of the policy issued on this application, within six months after such forfeiture, issue a non-participating paid-up policy for such
17 sum as the reserve upon this policy at the time of such forfeiture, according to the legal standard of the State of New York, will purchase as a single premium at the company's published rates, and in further consideration of the participation of the policy in any surplus of the company which may be distributed while it is in force, all right or claim to any other surrender value than that so promised, whether required by statute of any State or not, is hereby relinquished.

And there is printed upon and is constituting a part of the same, the following:

Special Notice to Applicants and Policy-holders.

The following facts relating to contracts between this company and its policy-holders are of special importance to all concerned, namely:

First. This company cannot entertain any proposition on the part of the husband to change the interest in a wife's policy, while said policy is in force in her favor.

Second. The company does not agree to restore a policy after lapse for non-payment of premium; and when, in special cases, policies are restored, satisfactory evidence of the insurable condition of the party must be given.

Third. No policy-holder must expect to be notified when his premium will be due. It is the practice of the company to send these notices as reminders, when the address is known, but no responsibility is assumed on the part of the company, in consequence of their non-reception.

Fourth. In making inquiries, state the number of the policy as well as the name of the assured.

18 Fifth. The fact that a policy has additions to its credit gives no authority to the company to apply them to the payment of premiums, without the written directions from the party interested.

III.

That said Alexander Cohen, on the eleventh day of June, 1892, paid one-half of the annual premium due on said policy for the year beginning on the eleventh day of June, all premiums due before that time having been paid, and thereafter wholly neglected, failed, and refused to pay any other or further annual premium, or part thereof, upon said policy, and that no payment whatever was made by or on behalf of said Alexander Cohen of any annual or semi-annual premium due upon the said policy, but the same was by him suffered to lapse and become forfeited. That the said policy of insurance contains a provision as follows:

"All premiums are due and payable at the home office of the

company in the city of New York, but will be accepted elsewhere whenever duly made in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice required by any statute is hereby expressly waived."

That notwithstanding the last-named provision and other similar provisions in the said policy and application, the said Alexander Cohen wholly failed and neglected to pay or caused to be paid any premium or part of premium, due and payable upon said
19 policy subsequent to the payment of the half-annual payment thereon for the year beginning June 11, 1892, but suffered the said policy to become lapsed and forfeited for failure to make payment of premium, and that by reason of the said failure and neglect on the part of said Alexander Cohen to pay or cause to be paid the premiums due upon said policy, the same became forfeited and lapsed and void, so declared by defendant.

Wherefore defendant prays that plaintiff take nothing by her said action and the defendant recover its costs herein.

STRUVE, ALLEN, HUGHES & McMICKEN,
Attorneys for Defendant.

STATE OF WASHINGTON, } ss:
County of King, }

Sherwood Gillespy, being first duly sworn, on oath deposes and says: That he is the general agent for the State of Washington of the defendant in the above-entitled action, authorized by it to solicit insurance in said State, and that he makes this affidavit in verification of the foregoing answer on behalf of said defendant. That he has read said answer, knows the contents thereof and believes the same to be true.

SHERWOOD GILLESPY.

Subscribed and sworn to before me this twenty-first day of March, 1899.

H. J. RAMSEY,
Notary Public in and for the State of Washington,
Residing at Seattle.

20 Filed in the United States circuit court March 23, 1899.

A. REEVES AYRES, *Clerk.*
SAM'L D. BRIDGES, *Deputy.*

And afterwards, to wit, on the thirtieth day of March, 1899, there was duly filed in said court in said cause a demurrer to answer and stipulation in the words and figures following, to wit:

In the Circuit Court of the United States, District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 613.

Demurrer to Answer.

Comes now the plaintiff, by her attorney, and demurs to the affirmative defense of the answer of the defendant herein on the ground that the same does not state facts sufficient to constitute a defense to plaintiff's complaint.

S. WARBURTON,
Attorney for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

S. Warburton, being the attorney for the plaintiff in the above cause, believes the foregoing demurrer is well founded in point of law.

S. WARBURTON.

21 Received copy this thirtieth day of March, 1899.
STRUVE, ALLEN, HUGHES & McMICKEN,
Attorneys for Defendant.

Filed in the United States circuit court, district of Washington, March 30, 1899.

A. REEVES AYRES, *Clerk.*
R. M. HOPKINS, *Deputy.*

In the Circuit Court of the United States, District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

Stipulation as to the Application for Insurance.

It is hereby stipulated and agreed by and between the parties hereto by their respective counsel that the annexed paper is a true and correct copy of that certain application for insurance which is referred to in the complaint of the plaintiff in the above cause as well as in the answer of the defendant in the above cause. That the same shall be and is hereby agreed to be a part of plaintiff's complaint as much as if the same had been copied therein and set forth as a part of the complaint in said cause.

22 Dated the twenty-fourth day of March, 1899.
S. WARBURTON, *Attorney for Plaintiff.*
STRUVE, ALLEN, HUGHES & McMICKEN AND
STENDWICK & PETERS, *Attorneys for Defendant.*

Filed in the United States circuit court, district of Washington, March 30, 1899.

A. REEVES AYRES, *Clerk.*
R. M. HOPKINS, *Deputy.*

Form A.

Application for insurance in the Mutual Life Insurance Company of New York, 140 to 146 Broadway, corner of Liberty street, New York city, subject to the charter of such company and the laws of said State.

The following questions will be answered by the person whose life is proposed for insurance:

Give your full name—Alexander Cohen; residence, town—Butte City; county—Silver Bow; State—Montana.

Place of business, Butte City; county—Silver Bow; State—Montana.

What is your particular occupation or employment; if more than one, state all. Merchant—groceries and provisions, no bar.

Former residence, if recently changed? ——. Former occupation, if recently changed? ——.

In giving the occupation of the person, it is not sufficient
23 to state (for example) that he is a merchant or mechanic, but the particular branch of business, or the actual trade, must be specified.

What is the name of the person for whose benefit the insurance is proposed? Alexander Cohen.

Residence and post-office address. Butte City, Montana.

A. Do you wish the policy made payable in one sum or in installments? One sum.

Relationship to the person proposed for insurance? Self.

State the amount of insurance applied for. $3,000.00 (three thousand dollars).

B. If in installments, how many? ——.

State the kind of policy desired—if a semi-endowment, write the amount of insurance and amount of endowment separately. $3,000.00 insurance; $1,500.00 endowment.

C. Do you wish such installments to be annual, semi-annual or quarterly? ——.

How is the premium to be paid—annually, semi-annually, or quarterly? Annually.

If a life policy is applied for, state precisely whether it shall be paid (if for the benefit of the wife) to her children, or to the children of the two, if she shall be not living at its maturity. Children of the two.

(To be answered only in case an endowment is applied for.)

State to whom it shall be paid in case of the death of the beneficiary before the maturity of the contract. Tine Cohen, wife.

A. State your place of birth. A. Prussia, Germany.

24 B. The date of birth. B. July 4, 1848.

A. What is your age at the nearest birthday? B. Are you married? A. 37 years. B. Yes.

—. Are you now insured in this company? B. Give total amount. C. Give number of each policy. A. No. B. $——. C. ——.

Are you aware that the company will not be liable for insurance procured on any single life for over $30,000 (the prescribed limit) except on the semi-endowment plan? Yes.

A. Are you now insured in any other company? B. Give the name of each company, and the amount in each. A. No. B. ——.

Have you made any proposal or opened a negotiation for insurance upon your life, in any company or association? B. Has any application for such insurance ever been made upon which a policy has not been issued? State full particulars in either case, including the name of each company. A. No. B. ——.

A. Are you engaged in the manufacture or sale of intoxicating drinks? B. Have you ever been so engaged? State full particulars. A. No. B. No.

Dated at Butte City, Montana, the ninth day of June, 1885.

Signature of the person proposed for insurance:

ALEXANDER COHEN.

In the presence of—

T. F. McAVOY.

25 *Form B.*

Questions to the person proposed for insurance, the answers to which are to be submitted to the medical examiner, who will witness the signatures thereto.

1. A. Are you now in good health? B. Have you always had good health? A. Yes. B. Yes.

2. Have you been subject to or had any of the following disorders or diseases:

Asthma, apoplexy, bronchitis, cancer, colic (bilious, renal, or hepatic), consumption, or any form of trouble referable to the lungs, cough (habitual), chronic diarrhœa, delirium tremens, dizziness, difficulty in swallowing, or any other symptom indicating disease of the heart or neighboring vessels, difficulty in urinating (excessive or scanty), secretion of the urine, or any disease of the genital or urinary organs, dropsy? No.

Dyspepsia, dysentery, eruptions or disease of the skin, erysipelas, fistula, fits or convulsions, general debility, gout, gravel, or any symptom pointing to bladder or kidney trouble, habitual consumption, hemorrhoids, any other disease of the stomach or bowels, headaches (severe, frequent, or protracted), inflammation of the lungs, insanity, jaundice? No.

Liver complaint of any form, loss of consciousness, lumps or swellings of any kind, neuralgia, open sores, paralysis, palsy, palpitation of the heart, pleurisy, rheumatism, swelling of the feet, hands, or eyelids, spitting or coughing of blood, shortness of breath,

sunstroke, suppurating glands, syphilis, varicose veins, yellow fever? No.

26 3. A. Have you ever had any serious illness or disease other than those above mentioned? B. If so, state how long since. C. Its nature and duration. D. Is any effect now perceptible? A. No. B. ——. C. ——. D. ——.

4. Have you been subject to or had any difficulty with your eyesight or sense of hearing? No.

5. A. Have you ever had inflammatory rheumatism? B. If so how many attacks, and in what years? C. Duration and severity? D. Were they accompanied by cough, shortness of breath, pain in the chest, or palpitation of the heart? A. No. B. ——. C. ——. D. ——.

6. A. Are you ruptured? B. What form? Single or double? C. Is it reducible? D. Is a suitable truss worn? A. No. B. ——. C. ——. D. ——.

7. A. Have you ever had any malformation or injury, or undergone any surgical operation? If so, state fully its nature, duration, and results. A. No.

8. Have you any predisposition, either hereditary or acquired, to any constitutional disease (as consumption, rheumatism, syphilis, insanity)? No.

9. Has your weight recently increased or diminished? If so, to what extent and how rapidly, and to what cause do you attribute it? Average.

10. How long is it since you were successfully vaccinated? Had small-pox.

11. To what extent do you use alcoholic stimulants? Moderately.

27 12. To what extent have you been in the habit of using them during your past life? All the same.

13. What is your present habit with respect to the use of tobacco? Smoke moderately.

14. What has been your past habit with respect to the use of tobacco? The same.

15. A. Do you use opium or any other narcotic? B. Have you ever used them? A. No. B. No.

16. How long is it since you were attended by a physician or professionally consulted one? When about eleven years old.

17. For what disease or ailments? Small-pox.

18. Give the name and address of the physician that attended you. Can't remember.

19. What is the name and address of your usual medical adviser? None.

State, so far as you know, what was the age at death, cause of death, duration of final illness, and state of previous health of each of the following persons deceased. What is the age and present state of health of each of them if now living:

Age, if living, condition of health, age at death, cause of death, how long sick: Father: 90; age. Mother: 68; don't know; short time; previous condition good. Brothers: 1; 46; good. Sisters:

3; 50; good; 42; good; 39; good. Father's mother: 90; age. Father's father: 86; age. Mother's mother: 90; age. Mother's father: over 90; don't know.

In giving cause of death, avoid all indefinite terms, such as "general debility," "fever," "exposure," etc. If the word child-
28 birth be used, how long after delivery did death occur, and were there any symptoms of disease of the chest, such as cough, expectoration, etc.

20. Have your grandparents, or any of their descendants, died or suffered from consumption, scrofula, insanity, gout, rheumatism, or any pulmonary or hereditary disease? If so, what was the age of such person at death? His or her relationship to you? The cause of death? Answer in detail. No.

21. Is there anything, or has there ever been anything in your physical condition, family or personal history or habits, tending to shorten your life, which is not distinctly set forth above? No.

The following declaration and agreement must be signed by the person in whose favor a policy is applied for and by the person whose life is proposed for insurance:

It is hereby declared and agreed that all the statements and answers to the printed questions upon the forms A and B, which, together with this declaration and agreement, constitute an application to the Mutual Life Insurance Company of New York, for an insurance of —— dollars upon the life of —— ——, are offered to the said company as a consideration of the contract applied for; each of which, every person whose name is hereto subscribed warrants to be full, complete, and true, and to be the only statements given to the company in reply to its inquiries. And this application is submitted to the said company with the following express covenants and agreements: 1. That it will constitute no contract of insurance until a policy shall first have been issued and delivered by
29 the said company, and the first premium thereon actually paid, during the continuance of the life proposed for insurance, in the same condition of health as described in the application; 2. That if the insurance applied for be granted by the company, the policy, if accepted, will be accepted subject to all the conditions and stipulations contained in the policy; 3. That in any distribution of surplus, the principles and methods which may be adopted by the company for such distribution, and its determination of the amount equitably belonging to such policy, shall be and are hereby ratified and accepted by and for every person who shall have or claim any interest under the contract now proposed; 4. That in consideration of the surrender value promised in the policy, and in this application, viz: If this policy shall become forfeited by non-payment of any premium, at any time after three full annual premiums have been paid, the company will, upon surrender of the policy issued on this application, within six months after such forfeiture, issue a non-participating paid-up policy for such sum as the reserve upon this policy at the time of such forfeiture, according to the legal standard of the State of New York, will purchase as a single pre-

mium at the company's published rates, and in further consideration of the participation of the policy in any surplus of the company which may be distributed while it is in force, all right or claim to any other surrender value than that so promised, whether required by statute of any State or not, is hereby relinquished.

Dated at Butte, State of Montana, this ninth day of June, 1885.

30 A wife may sign by her husband, and children by their father, thus:

Wife: MARY SMITH,
By JOHN SMITH.
Children: ELLEN BROWN,
THOMAS BROWN,
By WILLIAM BROWN.

In the presence of—
H. A. AMSDEM, M. D.,
Medical Examiner.

Signature of the applicant:
ALEXANDER COHEN.

Signature of the person proposed for insurance:
ALEXANDER COHEN.

And afterward, to wit, on the thirty-first day of March, 1899, there was duly filed in said court in said cause a judgment in the words and figures following, to wit:

In the Circuit Court of the United States, District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 613.

Order Sustaining Demurrer and Judgment.

This cause coming on to be heard upon the plaintiff's demurrer to the defendant's answer herein, and the court having heard
31 the arguments of counsel thereon, and having considered the same, and being now fully advised in the premises:

It is ordered that said demurrer be, and the same is, hereby sustained; to which ruling of the court sustaining said demurrer the defendant by its counsel in open court at the time duly excepts, and its exception is allowed by the court.

Thereupon the defendant, by its counsel, in open court, announces that it does not desire to amend its said answer, but elects to stand thereon, and refuses to plead further; whereupon the plaintiff, by her counsel, moves the court for judgment in favor of the plaintiff and against the defendant upon said demurrer; and the court, being now fully advised in the premises, grants said motion and

orders judgment accordingly, to which action of the court in granting said motion for judgment and ordering judgment defendant at the time excepts, and its exception is allowed.

It is now therefore considered, adjudged, and decreed that the plaintiff, Tine Cohen, do have and recover of and from the defendant, The Mutual Life Insurance Company of New York, the sum of two thousand six hundred and seventy-one and forty-one one-hundredths (2,671.41) dollars, with interest thereon from the date hereof, together with the costs of this action, taxed at twenty-two and seven one-hundredths dollars, and that execution issue therefor; to which judgment and every part thereof defendant at the time excepts, and its exception is allowed.

Done in open court this thirtieth day of March, 1899.

C. H. HANFORD, *Judge.*

32 Filed in the United States circuit court March 31, 1899.
A. REEVES AYRES, *Clerk,*
By SAM'L D. BRIDGES, *Deputy.*

And afterward, to wit, on the twenty-fifth day of April, 1899, there was duly filed in said court in said cause an assignment of errors in the words and figures following, to wit:

In the United States Court of Appeals for the Ninth Circuit.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Plaintiff in Error, *vs.* TINE COHEN, Defendant in Error. } No. 613.

Assignment of Errors.

In the matter of the petition of The Mutual Life Insurance Company of New York, plaintiff in error.

Comes now the above-named plaintiff in error, Mutual Life Insurance Company of New York, on this twenty-fifth day of April, 1899, by its attorneys, Edward Lyman Short, Struve, Allen, Hughes & McMicken, and Strudwick & Peters, and say that in the record and proceedings in the above-entitled matter there is manifest error, of which it makes the following assignment of error in the above-entitled cause, to wit:

I.

The circuit court of the United States for the district of Washington, western division, erred in sustaining the demurrer
33 of the plaintiff and defendant in error, The Mutual Life Insurance Company of New York, a corporation.

II.

The said circuit court erred in sustaining the demurrer of said plaintiff and defendant in error to the answer of defendant and plaintiff in error.

III.

The said circuit court erred in granting judgment in favor of said plaintiff and defendant in error against said defendant and plaintiff in error for the amount of said judgment, or any sum, because it is manifest upon the issues formed in said cause that said plaintiff and defendant in error was not entitled to judgment.

IV.

The said circuit court erred in not submitting said cause to trial upon the issues formed by the pleadings.

Wherefore, the said plaintiff in error prays that the judgment of the said circuit court of the United States for the district of Washington, western division, be reversed, and that the said circuit court of the United States be ordered to enter an order reversing and setting aside said judgment and granting a new trial in said cause.

EDWARD LYMAN SHORT AND
STRUVE, ALLEN, HUGHES & McMICKEN,
Attorneys for Plaintiff in Error.

34 Copy of foregoing assignment of errors received and service of same acknowledged at Tacoma, Washington, this twenty-fifth day of April, 1899.

S. WARBURTON,
Attorney for Tine Cohen, Defendant in Error.

Filed in the United States circuit court, district of Washington, April 25, 1899.

A. REEVES AYRES, *Clerk.*
H. M. WALTHEW, *Deputy.*

And afterward, to wit, on the twenty-fifth day of April, 1899, there was duly filed in said court in said cause a petition for writ of error, bond, and order allowing writ of error, in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Washington, Western Division, Ninth Circuit.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Defendant. } No. 613.

Petition for Order Allowing Writ of Error.

The said defendant, The Mutual Life Insurance Company of New York, a corporation, feeling itself aggrieved by the judgment entered in said cause on the thirty-first day of March, 1899, in favor of said plaintiff and against said defendant for the sum
35 of two thousand six hundred and seventy-one and forty-one one-hundredths dollars, and twenty-two and seven one-hun-

dredths dollars costs, in which judgment, and the proceedings leading up to the same, certain errors were committed to the prejudice of the said defendant, which more fully appear from the assignment of errors which is filed herewith, comes now and prays said court for an order allowing said defendant to prosecute a writ of error to the honorable United States circuit court of appeals for the ninth circuit for the correction of the errors complained of, under and according to the laws of the United States in that behalf made and provided, and also prays that an order be made fixing the amount of security which the said defendant shall give upon said writ of error, and that upon the furnishing of said security all further proceedings in this cause may be suspended and stayed until the determination of said writ of error by said circuit court of appeals for the ninth circuit. And further prays that a transcript of record, proceedings, and papers in this cause, duly authenticated, may be sent to the circuit court of appeals, and your petitioner will ever pray.

Dated this twenty-fifth day of April, 1899.

EDWARD LYMAN SHORT AND
STRUVE, ALLEN, HUGHES & McMICKEN,
Attorneys for the Defendant, The Mutual Life Insurance Company of New York (a Corporation).

Copy of foregoing petition for order allowing writ of error received, and service of same acknowledged at Tacoma, Washington, this twenty-fifth day of April, 1899.

S. WARBURTON,
Attorney for Tine Cohen, Plaintiff.

36 Filed in the United States circuit court, district of Washington, April 25, 1899.

A. REEVES AYRES, *Clerk.*
H. M. WALTHEW, *Deputy.*

In the Circuit Court of the United States for the District of Washington, Western Division, Ninth Circuit.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Defendant. } No. 613.

Order Granting Writ of Error and Fixing Amount of Bond.

This cause coming on this day to be heard in the court-room of said court in the city of Tacoma, Washington, upon the petition of the defendant, The Mutual Life Insurance Company of New York, a corporation, herein filed, praying the allowance of a writ of error to the United States circuit court of appeals for the ninth circuit, together with the assignment of errors also herein filed, in due time, and also praying that a transcript of the record and proceedings and papers upon which the judgment herein was rendered,

duly authenticated, may be sent to the United States circuit court *court* of appeals for the ninth circuit, and that such other and further proceedings may be had as may be proper in the premises.

37 The court having duly considered the same, does hereby allow the said writ of error prayed for, and it is ordered that upon the giving by said defendant, The Mutual Life Insurance Company of New York, a corporation, of a bond according to law in the sum of four thousand dollars, the same shall operate as a supersedeas bond and all proceedings be stayed, pending the determination of said writ of error.

Dated this twenty-fifth day of April, 1899.

C. H. HANFORD, *Judge.*

Copy of the foregoing order received and service of the same acknowledged this twenty-fifth day of April, 1899.

S. WARBURTON,
Attorney for Plaintiff.

Filed in the United States circuit court, district of Washington, April 25, 1899.

A. REEVES AYRES, *Clerk.*
H. M. WALTHEW, *Deputy.*

In the Circuit Court of the United States for the District of Washington, Western Division, Ninth Circuit.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Defendant. } No. 613.

Supersedeas Bond.

Know all men by these presents, that we, The Mutual Life Insurance Company of New York, a corporation, the above-named

38 defendant, as principal, and E. C. Newfelder and R. V. Ankeny, of King county, Washington, as sureties, are held and firmly bound unto Tine Cohen, the above-named plaintiff, in the sum of four thousand dollars, to be paid to said plaintiff, her executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this twenty-fifth day of April, 1899.

The condition of the above obligation is such, that whereas, in the above court and cause, final judgment was rendered against the said defendant and in favor of said plaintiff, in the sum of two thousand six hundred and seventy-one and forty-one one-hundredths dollars, with interest and costs, and

Whereas, the said defendant has obtained from said court a writ

of error to reverse the judgment in said action, and a citation directed to the plaintiff is about to be issued citing and admonishing her to be and appear in the United States circuit court of appeals for the ninth circuit, to be held at San Francisco, in the State of California:

Now therefore, if the said defendant, The Mutual Life Insurance Company, a corporation, of New York, shall prosecute the said writ of error to effect, and shall answer all damages and costs that
39 may be awarded against it if it fails to make its plea good, then the above obligation to be void, otherwise to remain in full force and effect.

THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK, [SEAL.]
By N. W. ENGLE,
Its Agent for the State of Washington,
And by STRUVE, ALLEN, HUGHES & McMICKEN,
Its Attorneys.
E. C. NEUFELDER. [SEAL.]
R. V. ANKENY. [SEAL.]

UNITED STATES OF AMERICA, }
District of Washington, King County, } ss:

E. C. Neufelder and R. V. Ankeny, sureties on the foregoing bond, being each duly sworn, each for himself deposes and says: That he is a freeholder in said district, and that he, the said E. C. Neufelder, is worth the sum of four thousand dollars; and that he, the said R. V. Ankeny, is worth the sum of four thousand dollars, and in each case exclusive of property exempt from execution, and over and above all debts and liabilities.

E. C. NEUFELDER.
R. V. ANKENY.

Subscribed and sworn to before me this twenty-fifth day of April.

JAMES KEIFER,
United States Commissioner.

The sufficiency of the sureties of the foregoing bond approved by me this twenty-fifth day of April, 1899.

C. H. HANFORD,
Judge of said Court.

40 Copy of foregoing bond received and service of same acknowledged, at Tacoma, Washington, this twenty-fifth day of April, 1899.

S. WARBURTON,
Attorney for Plaintiff.

Filed in the United States circuit court, district of Washington, April 25, 1899.

A. REEVES AYRES, *Clerk.*
H. M. WALTHEW, *Deputy.*

Deputy.

And afterward, to wit, on the twenty-fifth day of April, 1899, there was duly filed in said court in said cause an original writ of error, in the words and figures following, to wit:

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Washington, western division, Greeting:

Because in the record and proceeding-, and also in the rendition of the judgment of the plea which is in the said circuit court before you, or some of you, between Tine Cohen, plaintiff, and The Mutual Life Insurance Company of New York, defendant, a manifest error hath happened to the great damage of the said The Mutual Life Insurance Company of New York, a corporation, defendant, as is said and appears by the complaint; we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid, in this behalf, do command you, if any judgment be therein given, that then, under your seal,
41 distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justice of the United States circuit court of appeals for the ninth circuit, at the court-rooms of said court in the city of San Francisco, in the State of California, together with this writ, so that you have the same at the said place before the justice aforesaid, on the twenty-fourth day of May, 1899, that the record and proceedings aforesaid being inspected, the said justice of the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

A. REEVES AYRES,
Clerk of the said Circuit Court of the United States for the Ninth Circuit, District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

The foregoing writ is hereby allowed.

C. H. HANFORD,
United States District Judge for the District of Washington, Sitting as Judge of said Circuit Court of the United States for the Ninth Circuit, District of Washington.

42 Received this twenty-fifth day of April, 1899, a true copy of the foregoing writ of error, for defendant in error, Tine Cohen.

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the Ninth Circuit, District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

Filed in the United States circuit court, April 25, 1899.
A. REEVES AYRES, *Clerk,*
SAM'L D. BRIDGES, *Deputy.*

And afterward, to wit, on the twenty-fifth day of April, 1899, there was duly filed in said court in said cause, a copy of writ of error in the words and figures following, to wit:

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Washington, western division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said circuit court before you, or some of you, between Tine Cohen, plaintiff, and The Mutual Life Insurance Company of New York, defendant, a manifest error hath happened to the great damage of the said, The Mutual Life Insurance Company of New York, a corporation, defendant, as is said and appears by the complaint; we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if any judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings
43 aforesaid, with all things concerning the same, to the justice of the United States circuit court of appeals for the ninth circuit, at the court-rooms of said court in the city of San Francisco, in the State of California, together with this writ, so that you have the same at the said place before the justice aforesaid, on the twenty-fourth day of May, 1899, that the record and proceedings aforesaid being inspected, the said justice of the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

A. REEVES AYRES,
Clerk of said Circuit Court of the United States for the Ninth Circuit, District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

The foregoing writ is hereby allowed.

C. H. HANFORD,
United States District Judge for the District of Washington, Sitting as Judge of said Circuit Court of the United States for the Ninth Circuit, District of Washington.

Filed in the United States circuit court April 25, 1899.

A. REEVES AYRES, *Clerk.*
SAM'L D. BRIDGES, *Deputy.*

44 And afterward, to wit, on the twenty-fifth day of April, 1899, there was duly issued out of and returned and filed in said court a citation in the words and figures as follows, to wit:

Citation.

UNITED STATES OF AMERICA, *ss:*

To Tine Cohen, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States circuit court of appeals for the ninth circuit, to be holden in the city of San Francisco, State of California, on the twenty-fourth day of May, 1899, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the district of Washington, western division, wherein The Mutual Life Insurance Company of New York, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated the twenty-fifth day of April, 1899.

C. H. HANFORD,
United States District Judge for the District of Washington, Sitting as Judge of said Circuit Court of the United States for the Ninth Circuit, District of Washington.

Attest: A. REEVES AYRES,
Clerk of said Circuit Court of the United States for the Ninth Circuit, District of Washington,
By SAMUEL D. BRIDGES, *Deputy.*

45 We hereby, this twenty-fifth day of April, 1899, acknowledge service of the foregoing citation at Tacoma, Washington.

S. WARBURTON,
Counsel for Tine Cohen.

Filed in the United States circuit court April 25, 1899.

A. REEVES AYRES, *Clerk.*
SAM'L D. BRIDGES, *Deputy.*

In the Circuit Court of the United States for the District of Washington, Western Division.

TINE COHEN, Plaintiff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant. } No. 609.

Clerk's Certificate to Transcript.

UNITED STATES OF AMERICA, *District of Washington,* } ss:

I, A. Reeves Ayres, clerk of the circuit court of the United States for the ninth circuit, district of Washington, western division, do hereby certify that the foregoing typewritten pages, numbered from one to thirty-eight, both inclusive, constitute and are a complete, true and correct copy of the record, papers, and all proceedings had in said action as the same remains on file and of record in the office of the said circuit court, and that the same which I transmit,
46 constitutes my return to the annexed writ of error, lodged and filed in my office on the twenty-fifth day of April, 1899. I also hereto annex and transmit herewith the original citation in said action.

I further certify that no opinion of the court was rendered or filed in said action.

I further certify that the costs of preparing and certifying the foregoing transcript of record is the sum of $18.95, and that the same has been paid me in full by Struve, Allen, Hughes & McMicken attorneys for the plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, this eighth day of May, 1899.

A. REEVES AYRES, *Clerk,*
By SAM'L D. BRIDGES,
Deputy Clerk.

[SEAL.]

[Cancelled 10-ct. int. rev. stamp.]

Writ of Error (Original).

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the circuit court of the United States for the district of Washington, western division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said circuit court before you, or some of you, between Tine Cohen, plaintiff, and The
47 Mutual Life Insurance Company of New York, defendant, a manifest error hath happened, to the great damage of the said, The Mutual Life Insurance Company of New York, a corporation, defendant, as is said and appears by the complaint; we, being willing

that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid, in this behalf, do command you, if any judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justice of the United States circuit court of appeals for the ninth circuit, at the court-rooms of said court in the city of San Francisco, in the State of California, together with this writ, so that you have the same at the said place before the justice aforesaid, on the twenty-fourth day of May, 1899, that the record and proceedings aforesaid being inspected, the said justice of the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

A. REEVES AYRES,
Clerk of said Circuit Court of the United States for the Ninth Circuit, District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

48 The foregoing writ is hereby allowed.

C. H. HANFORD,
United States District Judge for the District of Washington, Sitting as Judge of said Circuit Court of the United States for the Ninth Circuit, District of Washington.

[SEAL.]

Received this twenty-fifth day of April, 1899, a true copy of the foregoing writ of error, for defendant in error Tine Cohen.

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the Ninth Circuit, District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

(Endorsed:) Original. No. —. In the United States circuit court of appeals for the ninth circuit. Mutual Life Insurance Company of New York, plaintiff in error, *vs.* Tine Cohen, defendant in error. Writ of error. Filed in the United States circuit court April 25, 1899. A. Reeves Ayres, clerk. Sam'l D. Bridges, deputy. Edward Lyman Short, Struve, Allen, Hughes & McMicken, attorneys for plaintiff in error.

Citation (Original).

UNITED STATES OF AMERICA, ss:

To Tine Cohen, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States circuit court of appeals for the ninth
49 circuit, to be holden in the city of San Francisco, State of California, on the twenty-fourth day of May, 1899, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the district of Washington, western division, wherein The Mutual Life Insurance Company of New York, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated the twenty-fifth day of April, 1899.

C. H. HANFORD,
United States District Judge for the District of Washington, Sitting as Judge of said Circuit Court of the United States for the Ninth Circuit, District of Washington.

Attest:

[SEAL.] A. REEVES AYRES,
Clerk of said Circuit Court of the United States for the Ninth Circuit, District of Washington,
By SAM'L D. BRIDGES, *Deputy.*

We hereby this twenty-fifth day of April, 1899, acknowledge service of the foregoing citation at Tacoma, Washington.

S. WARBURTON,
Counsel for Tine Cohen.

50 (Endorsed:) Original. No. —. In the United States circuit court of appeals for the ninth circuit. Mutual Life Insurance Company of New York, plaintiff in error, *vs.* Tine Cohen, defendant in error. Citation. Filed in the United States circuit court April 25, 1899. A. Reeves Ayres, clerk. Sam'l D. Bridges, deputy. Edward Lyman Short, Struve, Allen, Hughes & McMicken, attorneys for plaintiff in error.

(Endorsed:) No. 539. In the United States circuit court of appeals for the ninth circuit. The Mutual Life Insurance Company of New York, plaintiff in error, *vs.* Tine Cohen, defendant in error. Error to the circuit court of the United States for the district of Washington, western division. Transcript of record. Filed May 15, 1899. F. D. Monckton, clerk.

At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals, for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Wednesday, the seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

51 THE MUTUAL LIFE INSURANCE COMPANY OF New York
v.
TINE COHEN. } No. 539.

Order of Submission.

Ordered cause argued by John B. Allen and R. C. Strudwick, Esquires, counsel for the plaintiff in error, and Stanton Warburton, Esquire, counsel for the defendant in error, and submitted to the court for consideration and decision.

In the United States Circuit Court of Appeals, Ninth Circuit.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW York (a Corporation), Plaintiff in Error,
v.
TINE COHEN, Defendant in Error. } No. 539.

Opinion U. S. Circuit Court of Appeals.

In error to the circuit court of the United States for the district of Washington, western division.

Edward Lyman Short, and John B. Allen, for plaintiff in error; Struve, Allen, Hughes & McMicken, of counsel.
S. Warburton, for defendant in error.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

52 HAWLEY, *District Judge:*

This action is brought upon a policy of insurance issued to Alexander Cohen June 10, 1885, for three thousand dollars, made payable in case of his death to his wife Tine Cohen, the defendant in error herein. Endorsed and printed upon the notice of the application for the policy is the following notice to applicants and policy-holders: "No policy-holder must expect to be notified when his premium will be due. It is the practice of the company to send these notices as reminders, when the address is known, but no responsibility is assumed on the part of the company, in consequence of their non-reception." All the premiums upon this policy were paid up to June 11, 1892, and one-half of the annual premium due for the year commencing on that day was paid. No other premiums were paid.

Alexander Cohen died September 21, 1897. Judgment was rendered in favor of defendant in error for $2,671.41. The facts alleged in the pleadings, and the ruling of the court thereon bring the case within the principles announced in The Mutual Life Insur-

ance Company *v.* Hill, *ante*, and upon the authority of that case, and of the authorities cited therein, the judgment of the circuit court is affirmed, with costs.

(Endorsed:) Opinion. Filed Oct. 2, 1899. F. D. Monckton, clerk.

53 United States Circuit Court of Appeals for the Ninth Circuit, October Term, 1899.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff in Error, *v.* TINE COHEN, Defendant in Error. } No. 539.

Judgment U. S. Circuit Court of Appeals.

In error to the circuit court of the United States for the district of Washington, western division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Washington, western division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed, with costs.

(Endorsed:) Judgment. Filed Oct. 2, 1899. F. D. Monckton, clerk.

54 At a stated term, to wit, the October term, A. D. 1899, of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday, the ninth day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK *v.* TINE COHEN. } No. 539.

Order Staying Mandate.

Upon motion of Warren Gregory, Esquire, ordered mandate herein stayed until the further order of the court.

United States Circuit Court of Appeals for the Ninth Circuit.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff in Error, v. TINE COHEN, Defendant in Error. } No. 539.

Clerk's Certificate to Transcript, U. S. Circuit Court of Appeals.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing
55 fifty-four (54) pages, numbered from one (1) to fifty-four (54) inclusive, to be a full, true and correct copy of the transcript of the record, the order of submission, the opinion, the judgment, and the order staying mandate in the above-entitled cause, as the originals thereof remain and appear of record in my office, and that the same together constitutes a copy of the entire record of the case in said United States circuit court of appeals for the ninth circuit.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this fourteenth day of October, A. D. 1899.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Oct. 14, '99. F. D. M.]

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56 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The Mutual Life Insurance Company of New York is plaintiff in error and Tine Cohen is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Washington, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the sixth day of February, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 454, October term, 1899. The Mutual Life Ins. Co. of New York *vs.* Tine Cohen. Writ of certiorari. Filed Feb. 15, 1900. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE MUTUAL LIFE INSURANCE COMPANY, Petitioner and Plaintiff in Error,
vs.
TINE COHEN. } No. 539.

Stipulation as to Return of the Writ of Certiorari.

It is, this 16th day of February, A. D. 1900, stipulated by and between the attorneys of record for the parties in the above-entitled cause that the certified transcript of the record of said cause, heretofore submitted to the Supreme Court of the United States with the petition for a writ of certiorari, may be filed in the said Supreme Court, and may be received and considered by that court as the transcript of the record in said cause as though the same had been returned by the clerk of the circuit court of appeals for the ninth

circuit in obedience to the writ of certiorari granted February 6th, 1900.

STRUVE, ALLEN, HUGHES & McMICKEN, AND
STRUDWICK & PETERS.
Attorneys for Petitioner and Plaintiff in Error.
S. WARBURTON,
Attorney for Respondent and Defendant in Error.

(Endorsed:) Stipulation as to return to writ of certiorari. Filed Feb. 20, 1900. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the next preceding page to be a full, true, and correct copy of a stipulation entered into between the respective counsel, filed in the cause entitled The Mutual Life Insurance Company of New York, plaintiff in error, *v.* Tine Cohen, defendant in error, No. 539, as the original thereof remains of record in my office.

Seal United States Circuit Court of Appeals, Ninth Circuit.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 23d day of February, A. D. 1900.

F. D. MONCKTON, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Feb. 23, 1900. F. D. M.]

United States Circuit Court of Appeals for the Ninth Circuit.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff in Error,
v.
TINE COHEN, Defendant in Error.
} No. 539.

Return to Writ of Certiorari.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, in obedience to the foregoing writ of certiorari, issued out of the Supreme Court of the United States and addressed to the honorable judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above-entitled cause, do hereby attach to the said writ a certified copy of a stipulation entered into between the attorneys of record for the several parties in said cause on the 16th day of February, 1900, the

original of which stipulation has been heretofore filed in this court, and do make the same my return to said writ.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 23d day of February, A. D. 1900.

Seal United States Circuit Court of Appeals, Ninth Circuit.

F. D. MONCKTON, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Feb. 23, 1900. F. D. M.]

[Endorsed:] Case No. 17,568. Supreme Court U. S., October term, 1899. Term No., 454. The Mutual Life Ins. Co. of New York *vs.* Tine Cohen. Writ of certiorari & return thereto. Office Supreme Court U. S. Filed Mar. 10, 1900. James H. McKenney, clerk.